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DIVISION II

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STATE OF WASHINGTON

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Case No. 48410-2-II

COURT OF APPEALS

DIVISION II OF THE STATE OF WASHINGTON

Sidney A. Potts

Appellant

-vs-

The City of Longview Police Department

Respondent

ON APPEAL FROM THE SUPERIOR COURT OF THE

STATE OF WASHINGTON FOR COWLITZ COUNTY

COURT OF

THE HONORABLE STEPHAN WARNING

REPLY BRIEF

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Statement of the Case

Appellant relies on the Statement of the Case in the Opening Brief, except where stated below.

Argument

- I. Whether, Superior Courts Dismissal of Potts' Appeal violated his rights and protection under the due process clause of State and Federal Constitutions.

This error was specifically designated in the Notice of Appeal. However, Potts was waiting to begin dialysis for kidney failure while preparing the Opening Brief. During that time his cognitive process was severely impeded by his illness. For that reason, he inadvertantly failed to argue this error in the opening argument.

However, where the error was specifically designated in the Notice of Appeal, and if true, Superior Court has abused its discretion by committing a manifest error affecting a constitutional right, ~~it is well within this courts~~ discretionary authority to adjudicate the Matter. (RAP 2.5(a)).

Assignment of Error.

- I. Superior Court Ordered Supplemental Briefing, ex parte, without notice, or provision for Potts to respond or participate.

On September 8, 2012, the City filed its Motion to Dismiss

Potts Appeal. ((CP 370-375). On September 16, 2015 Superior Court held a hearing to determine the matter. The Citys Attorney, Mr. Manning addressed the court in reference to Potts Supplemental Notice of Appeal, and whether it relates back to the original notice of appeal, and whether Potts should be allowed to amend his Notice of Appeal to cure the alleged deficiencies under RCE 34.05.546.

Superior Court concluded that it needed supplemental Briefing on the issue. (CP 421). On September 28, 2015 the City filed the Supplemental Briefing requested by Superior Court. (CP 437-442).

On October 14, 2015, Superior Court called the Cause No. to determine the matter. The Citys Attorney addressed the court as to its Supplemental Brief and how it deprived Potts of the ability to amend his Original Notice of Appeal. Superior Court granted the Citys Motion to Dismiss. (CP 443).

Neither the court or the City notified Potts of the request for supplemental Briefing. Nor was Potts allowed time to respond to the Supplemental Briefing before the hearing he recieved no notification for, and was not allowed to participate in, telephonically or in person.

The Courts Order of Dismissal states that it considered Oral Argument and the Citys Supplemental Briefing. The Order does not mention that it was ex parte oral argument, and ex parte Supplemental Briefing. (CP 445-447)

Superior Court abused its judicial integrity and

discretion by entering the Order of Dismissal in violation of Civil Rule and the Code of Judicial Conduct.

Civil Rule and the Code of Judicial Conduct are identical in their wording. CR 2.9(A), CJC 2.9(A) - A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties or their lawyers, concerning pending or impending matters, before that judges court, and the exceptions are also identical, CR 2.9(A)(1)(b), CJC 2.9(A)(1)(b) - The judge makes provision promptly to notify all other parties of the substance of the ex parte communication, and gives the parties an opportunity to respond.

The court further abused its judicial integrity and discretion by entering the Order in violation of CR 26(A) and CJC 26(A) - A judge shall accord to every person who has legal interest in proceeding, or that persons lawyer, the right to be heard according to law.

This is not the first or last time Superior Court has committed this violation. The Original Notice of Appeal and Potts Motion to Vacate were Dismissed under the same circumstance.

The violations of Civil Rule and the Code of Judicial Conduct are egregious violations of Potts' right to due process under both, State and Federal Constitutions. This Court should reverse and vacate Superior Courts Dismissal, and Remand to Superior for a full and fair adversarial hearing in which Potts is allowed to participate.

II. Whether, This Court should vacate the Administrative Or Order of Forfeiture where it relates to property unlawfully seized from Potts Family Motors Incorporated.

In its response the City claims that although Potts argued this issue in Superior Court and in the Initial Brief, he has failed to properly appeal the issue, and the issue is not properly before the Court at this time.

As previously stated, during his illness Potts cognitive abilities were severely diminished. Potts remembers thinking one Notice of Appeal is all that is required for unfavorable rulings arising from the same Cause No.. As such, Potts filed timely Supplemental Statements of Arrangements and Designations of Clerks Papers. The City and the Court were fully appraised of Potts intention to appeal the issues argued.

Potts apologizes for his lack of legal expertise and training, but urges the Court to consider the merit of the issue as presented for two compelling reasons; (1) RAP 5.3(f) - Defects in Notice - The Appellate Court will disregard defects in the form of a Notice of Appeal or a Notice of Discretionary Review if the notice clearly reflects an intent by the party to seek review; and (2), A Judgement entered without personal jurisdiction over the defendant violates due process, and is void. Schell v Tri-State Litigation, 22 Wn.App. 788, 591 P.2d 1222 (1979); Bill Morris v Palouses River and Coulee City, Railroad inc., 149 Wn.App 366, 203 P.3d 1069 (Div. II 2009); Vanderbilt v Vanderbilt, 354 U.S. 416, 418, 71 S.Ct. 1360, 1 L.Ed.2d 1456 (1957); If the Order is Void, the Court need

not decide whether the motion to vacate is brought within a reasonable time, and whether the defendant has a defense to the claim. Colacurico v Burger, 110 Wn.App. at 497; Leen v Desmopolis, 62 Wn.App. 473, 477-488, 815 P.2d 269 (1991); The Court has a nondiscretionary duty to vacate a void judgment, and judgment must be vacated regardless of the lapse of time. In re Dependency of A.G., 93 Wn.App. at 276, (1998); Alstate Insurance Co. v Kani, 75 Wn.App. 317, 323, 877 P.2d 724 (1994).

Assignment of Error.

- (2). The Administrative Hearing Officer failed to acquire personal jurisdiction over Potts Family Motors Inc. property for issuance of the Administrative Order of Forfeiture.

On December 19, 2013, the Designated Hearing Officer was served with Notice from Potts Family Motors Incorporated that; (1), Potts Family Motors Incorporated was the lawful owner or possessor of all property seized on Corporate Property on August 10, 2012; (2), the statutorily required notice of seizure with intent to seek forfeiture, had not been served on the Corporation, or its Registered Agent, P. Michael Long; (3), Pursuant to RCW 69.50.505 this failure to comply with the statutes due process requirement of Notice, within the time allowed by statute, deprived the City of any statutory authority to seek forfeiture of any Potts Family Motors property seized on August 10, 2012 at 411 Oregon Way.

For the following reasons, the City's failure to comply

with the statute, has rendered the Administrative Order of Forfeiture void as issued, where it relates to the lawfully owned property of Potts Family Motors Incorporated.

(1). The City's failure to strictly comply with the forfeiture statutes due process requirement of notification to Potts Family Motors Incorporated, or the person in charge of the property, within the 15 days allowed by statute, deprived the City of statutory authority or personal jurisdiction to continue with the forfeiture proceeding where it pertained to the property of Potts Family Motors Incorporated, seized at 411 Oregon Way on August 10, 2012. State v Alway, 64 Wn. App. 796, 828 P.2d 591, Bill Morris v Palouse River and Coulee City Railroad Inc., 149 Wn.App. 366 203 P.3d 1069 (Div.II 2009).

(2). The Notice served on the Designated Hearing Officer at the December 19, 2013 forfeiture hearing, claiming ownership or right to possess all property seized from Potts Family Motors Inc. at 411 Oregon Way on August 10, 2012, established a statutory requirement for the Agency to hold a hearing within the 90 days to determine the claim. Espinoza v City of Everett, 87 Wn.App. 857, 943 P.2d 307 (1997).

(3). The City's failure to hold a hearing within 90 days of notice, statutorily deprived the City of any further authority to seek forfeiture of the lawfully owned or possessed property

of Potts Family Motors Incorporated. By law the forfeiture statute is no longer applicable. In re Forfeiture of One 1988 Chevrolet Corvette Automobile, 94 Wn. App. 320 963 P.2d 332 (1997).

(4). The City's failure to hold a hearing to determine Potts Family Motors claim of ownership is a due process violation. Valerion v Lacy Police Department, 110 Wn.App. 163, 39 P.3d 332 (Div.II 202).

(5). The City's non-compliance violates the due process command of Notice and Hearing for the failure to give notice and failure to hold a hearing within 90 days of notice by Potts Family Motors of its claim of ownership, and an Order issued as a result thereof is void. State v One Mercury Capri, 85 Wn.2d 620, (1975); State v Matheson, 84 Wn.2d 130 (1994); Everett v Slade, 83 Wn.2d 80 (1973), and a case directly on point with this case is; State ex. rel. Patchett v Superior Court of Franklin County, 60 Wn.2d 784, 787, 325 P.2d 747 (1962); where our Supreme Court held; "The probate Court acted outside its jurisdiction in failing to comply with statutory procedure. The law is well settled that an order entered without jurisdiction is void." Grady v Disheill, 24 Wn2d 272, 163 P.2d 922 (1945); supra; France v Freeze, 4 Wn. 2d 120, 102 P.2d 687 (1940).

(6). The power to Order Forfeiture of Property alleged to be associated with controlled substance violations is purely statutory, and will be denied absent strict compliance with proper forfeiture procedure. City of Walla Walla, v 404,333.44, 164 Wn.App.236 262 P.3d 1239 (Div.III 2011).

On December 19, 2012 at the forfeiture hearing the City was notified of Potts Family Motors Incorporated's claim of ownership. The Hearing Officer chose to disregard the claim and on January 29, 2013, without holding a hearing, forfeited Potts Family Motors property to the City. The Designated Hearing Officer issued the Administrative Order of Forfeiture in an arbitrary and capricious manner, outside his statutory authority to act.

On July 10, 2014 Potts filed a Judicial Notice of Fact in Superior Court claiming that the City had not notified Potts Family Motors of the seizure, and had failed to hold the required hearing within 90 days of that notification.

The Judicial Notice of Fact claimed that the Designated Hearing Officer, a public official, had acted in an arbitrary and capricious manner, outside his statutory authority to act. This allegation, standing alone, invoked Superior Courts inherent authority and nondiscretionary constitutional obligation to review and determine Potts' claim of official misconduct in violation of a fundamental right.

The Court made clear in State ex. rel. Hood v State

Personel Board, 82 Wn.2d 396, 511 P.2d 52, (1973); and Williams v Seattle School District 1, 97 Wn.2d 215, 221-222, 643 P.2d 426 (1973), that there is no limit to situations in which arbitrary and capricious action may be reviewed. The right to be free from such action is itself a fundamental right, and hence any arbitrary and capricious action is subject to review. The Courts inherent power of review extends to administrative action which is contrary to law as well as that which is arbitrary and capricious. Williams 221.

An Agency violation of the rules which govern its exercise of discretion is certainly contrary to law, and just as the right to be free from arbitrary and capricious action is a fundamental right, the right to have the Agency abide by law to which it is subject, is a fundamental right. Leonard v Civil Service Commission, 25 Wn.App. 699, 611 P.2d 1290.

Under Washington Constitution, Article 4, Section 6, Superior Court possesses constitutional and inherent power to review allegedly illegal or manifestly arbitrary and capricious non-judicial administrative action violative of a fundamental right. Hough v Washington Personel Bd., 24 Wn. App. 884 626 P.2d 1017 (Div. II 1981)

In order to invoke the trial courts inherent power to review non-judicial administrative action, a plaintiff must show a violation of a fundamental right i.e., the Agency exercised its discretion in a manner contrary to the constitution or its own regulations. Hough.

Thus, where the touchstone for invoking this Courts and Superior Courts constitutionally delegated responsibility to review [any] claim that the Designated Hearing Officer exercised his discretion in violation of any applicable statute, his own regulations, or the due process clause of the constitution, Potts has met that threshold requirement.

Potts claimed that the Administrative Order of Forfeiture was issued in an arbitrary and capricious manner, outside the Agencys statutory authority to act, and was therefore, VOID AS ISSUED. (See JUDICIAL NOTICE OF FACT, CP 316-322).

That claim put this proceeding in a different light, where the Agency lacked inherent or statutory authority to enter the order of Forfeiture, the order was void, and the trial court has a nondiscretionary duty when faced with a void judgement, it must vacate the judgement whenever the lack of jurisdiction comes to light. Bour v Johnson, 80 Wn. App. 645, 910 P.2d 548 (Div.II 1996); Mueller v Miller, 82 Wn.App. 236 (1993).

That claim required the City to prove existance of its authority or jurisdiction, Outsource Management LLC v Nooksack Busines Corporation, 172 Wn.App. 700, 292 P.3d 508 (2013), before the court could proceed with the non-jurisdictional issue of non-compliance with RCW 34.05.546.

Superior Court was required to make the jurisdictional determination because a judgement or order entered without jurisdiction, is a nullity, and no court, whether it be the court of original jurisdiction or appellate jurisdiction, will

continue an action or proceeding where it is made to appear that it is without jurisdiction. Hamilton v Johnson, 137 Wash. 92 (1925).

Superior Court was required by law and the constitution to determine whether the City held statutory authority or inherent jurisdiction to issue the Administrative Order of Forfeiture, before moving on, and the City's refusal to produce the Agency Record, placed Superior Court and Potts in the same position. Potts' proof that the City proceeded in an arbitrary and capricious manner, outside its authority to act, is held exclusively in the Agency Record, and the evidence required for Superior Court to make a fully informed and factual determination as to the City's authority or jurisdiction to issue the Administrative Order of Forfeiture, is contained exclusively in the Agency Record, which the City refuses to produce.

RCW 34.05.566(1) required the City to produce the Agency Record within 30 days of service of the petition for judicial review, and RCW 34.05.558 mandates; Judicial Review of disputed fact [shall] be conducted by the court without a jury and must be confined to the Agency Record for Judicial Review.

In light of Potts challenge to the City's statutory authority or inherent jurisdiction to issue the Administrative Order of Forfeiture, Superior Court was faced with two Choices; (1) Order up the Agency Record and make a proper determination of the City's statutory authority or jurisdiction; or (2) Disregard

Potts' jurisdictional challenge, and issue an Order of Dismissal for failure to comply with the non-jurisdictional allegation of failure to strictly comply with RCW 34.05.546, which is just as void as the Citys Administrative Order of Forfeiture. Superior Courts Order of Dismissal was issued outside its constitutional dutys and statutory authority.

Now that this Court has been fully briefed on the jurisdictional violations and challenges, this Court is in virtually the same position Superior Court was in when it failed to make the decision required of a neutral and detached magistrate under oath to support the laws and Constitution of the State and Federal Government.

This Court is faced with two void orders, entered outside the Agency and the Courts statutory or inherent authority to act. It is now this Courts nondiscretionary duty to vacate both orders.

In light of the above, Potts humbly requests this Court to Order up the Agency Record, and determine whether the City held statutory or inherent authority to issue the administrative Order of Forfeiture, and if it did not, vacate the Administrative Order of Forfeiture, and Superior Courts Order of Dismissal.

Or in alternative, Vacate Superior Courts Order of Dismissal, and remand to Superior Court with instructions to order up the Agency Record and make the jurisdictional determination required by Potts allegations.

Assignment of error.

(3). Potts is entitled to raise this issue on Appeal.

To put to rest the City's implication that since Potts is not the owner of Corporate property seized at 411 Oregon Way on August 10, 2012, and was not allowed to accept service or notice of seizure, he might not be entitled to raise the issue of jurisdiction herein, Potts submits the following;

Even if he were the sole stockholder, which he is not, he would still not be legal owner of Corporation Property, the Corporation being a separate entity. Patterson v Ford, 167 Wash. 8 P.2d 1006 (1932).

Potts may however, as a stockholder, file a derivative action to enforce a right that the Corporation may properly assert, but has failed to enforce.

Civil Rule 23.1(a) - Derivative Action.

This rule applies when one or more shareholders or members of a Corporation or an unincorporated association bring a derivative action to enforce a right that the Corporation or association may properly assert, but has failed to enforce.

III. Whether, Division II's recent Ruling in the Criminal proceeding, that the searches at 2839 Louisiana Street and 1275 Alabama Street were unauthorized, is dispositive to this case, pertaining to property seized at those addresses.

Assignment of Error.

(4) The City of Longview Police Department may not lawfully retain possession of property seized and forfeited under authority of an invalid warrant.

On July 6, 2016 Division II of the Court of Appeals, in

the Criminal side of this matter, Case No. 45724-5-II overruled Superior Courts Denial of Potts Motion to Suppress and Motion for Return of Property. (See Attached, Exhibit A). The Court ruled that Superior Court erred in denying the motion, and the property should be returned to its rightful owners.

In the Opening Brief, Potts conceded that Superior Courts denial of the motion established res judicata and collateral estoppel, preventing Potts from arguing that the searches and seizures were unlawful in the following forfeiture proceedings.

However, res judicata and collateral estoppel were defeated when Division II overruled Superior Courts erroneous conclusion that the searches and seizures were authorized.

It should follow then, and the Court of Appeals must have considered, that, once Superior Courts error is corrected, no forfeiture of property seized at those two addresses could have occurred on January 29, 2014, WHERE THE PROPERTY SHOULD HAVE BEEN ORDERED RETURNED TO POTTS ON MAY 7, 2013.

On August 22, 2016, in light of the Court of Appeals Criminal Ruling, Potts filed a renewed Motion for Return of Property, under the Criminal Cause Number, in Superior Court. On January 29, 2017, a hearing was held, and Superior Court ruled that a Court of Appeals Ruling in the Criminal Matter, did not control in a Superior Court Criminal proceedings.

Superior Court explained to Potts, that the Administrative Order of Forfeiture, issued by a Sargent of the Longview Police Department, in the [following] Civil Proceeding, withstood the Ruling of a Three Judge Panel of Appellate Court Justices, in the Court of [Original] Jurisdiction. Potts requested of Superior Court, a formal signed finding of fact and conclusions of law, for appellate purposes and the court was adjourned.

On February 8, 2017 Potts filed an Objection to the Oral Ruling and Motion to Reconsider. Potts set the Motion to Reconsider on the Motion Docket for Hearing, but Superior Court ruled that under local rule, Motions to Reconsider are not allowed hearings. On May 31, 2017, Superior Court entered an Order Denying the Motion to Reconsider the Denial of the Motion for Return of Property. The Court has still failed to enter its finding of fact and conclusions of law. However, its Order of Denial, **(See Attached, Exhibit B)**, affirming the Oral ~~Ruling~~ Potts outlined above, will be sufficient for Mandamus or Appellate purposes.

In the City's Response, it seeks to imply that Potts should have, and did not, move the Court for a stay of disposal of contested property. The implication is false and deliberately misleading. In July 2014 Potts asserted that Longview PD was not allowed to dispose of and/or transfer property contested in the Civil Forfeiture action, pursuant to rulings in the Criminal Case. (CP 79-83). The Criminal Ruling Potts referred

to is a Superior Court Order Staying Forfeiture Proceedings in relation to property seized on August 10, 2012 under authority of warrants issued by that Court. The Order states;

" IT IS HEREBY ORDERED, ADJUDGED AND DECREED, THAT any such forfeiture proceeding being conducted by the Longview Police Department pertaining to any and all property of the defendant seized by the police on or about August 10, 2012, and/or pursuant to any search warrants issued by this court, are hereby stayed pending resolution of the hearing on the defendants Motion for Suppression of Evidence filed herein on September 18, 2012." (See Attached, Exhibit C).

On July 6, 2016, the Court of Appeals resolved all issues pertaining to the search warrants executed on August 10, 2012 at 2839 Louisiana Street and 1275 Alabama Street. The Court Ruled that the searches and seizures were unauthorized, and that Superior Court, the Court of [Original] Jurisdiction, should return all unlawfully seized property to its rightful owners.

Superior Court and the City were aware that, although the Civil and Criminal Proceedings at times addressed the same issues, the Criminal Proceeding [preceeded] the [following] Civil Proceedings, and the Civil Proceeding was totally dependant upon Superior Courts Denial of the Motion for Return of Property for authority to Order Forfeiture of the property seized at 2839 Louisiana Street and 1275 Alabama Street on August 10, 2012.

The Court of Appeals has Overruled Denial of the Motion for Return of Property, and that Ruling is retroactive to

both Criminal and Civil Proceedings effected by Superior Courts Erronous Ruling. Under Civil Rule 60(b)(5), this Courts Ruling in the Criminal Proceeding has rendered the Administrative Order of Forfeiture VOID, where it pertains to the property unlawfully seized at 2839 Louisiana Street and 1275 Alabama Street on August 10, 2012.

For the reasons listed above, Potts humbly requests this Court to find that its Ruling on July 6, 2016, is dispositive in both Civil and Criminal Proceedings which pertain to the property unlawfully seized at the two addreses on August 10, 2012, Vacate the Order of Forfeiture where it pertains to the unlawfully seized property, and order Return of the Unlawfully seized property to its rightful owners.

Assignment of Error.

- (5). RCW 69.50.505 does not allow for Forfeiture of unlawfully seized property.

Division II's Ruling bars any Forfeiture of the property unlawfully seized at the two addresses under the ~~Invalidated~~ ~~warrant~~, and is dispositive to any further proceeding relating to property unlawfully seized at 2839 Louisiana Street and 1275 Alabama Street.

The property unlawfully seized at 2839 Louisiana Street and 1275 Alabama Street was not seized under authority of RCW 69.50.505, it was unlawfully seized under authority of invalid warrants, and an inventory of the unlawfully seized

Property was left at both locations to document this fact.

Therefore, RCW 69.50.505 does not control. CrR 2.3(e) governs the disposition of property seized by the police, regardless of the legality of the seizure, and a motion for return of property may be made at any time. State v Card, 48 Wn.App. 781 (1987).

Potts has done his part, he has proven that the property was unlawfully seized, and that he is entitled to its return. The City must now prove that the property was subject to forfeiture, or return the property. Rozner v Bellvue, 116 Wn.2d 342 (1991). The City can not meet this burden.

RCW 69.50.505(2)(a) does provide that property subject to forfeiture may be seized by any law enforcement officer of Washington State, upon process by any Superior Court having jurisdiction over the property, But it does not apply here. The warrants under which the property was seized, have been ruled invalid.

RCW 69.50.505(2)(d) provides that personal property subject to forfeiture, may be seized if the officer has probable cause to believe that the property was used or intended to be used in a violation of this chapter. Once again, the City is estopped by Division II's ruling that the warrants are invalid. A Municipality seeking forfeiture of items seized by law enforcement officers, is collaterally estopped from litigating in the forfeiture proceedings the

issue of whether the police had probable cause to conduct the search, if the issue had been previously determined by a court in a criminal prosecution brought by a county prosecuting authority. Barlindal v City of Bonney Lake, 84 Wn.App. 135 (1996). Further, the statute allows the officer to seize personal property without process, if, he has probable cause to believe it was used or intended to be used in criminal activity. It does not allow the officer to break in and seize what he chooses, then make a determination of probable cause to conform to what he has seized. The officers had no knowledge of what Potts possessed in the privacy of his home and shop, and could not have possibly had probable cause to believe that the unknown possessions were connected in any way to criminal activity. Barlindal v City of Bonney Lake, 84 Wn.App. 135 (1996).

Even if the officers discovered probable cause to believe that Potts property was connected to criminal activity during their unauthorized search, that finding of probable cause, would in itself, be inadmissible in a forfeiture hearing held under authority of RCW 69.50.505.

All evidence unlawfully obtained by searches and seizures in violation of the Fourth Amendment of the Federal Constitution is, by virtue of the due process clause of the Fourteenth Amendment guaranteeing the right to privacy free from unreasonable intrusion, inadmissible in state court. Mapp v Ohio, 6 L.Ed. 2d 1082 (1961). And, the Fourth Amendment Exclusionary Rule

applies to forfeiture proceedings brought under Washington's version of the Uniform Controlled Substance Act, thus illegally obtained evidence cannot sustain a forfeiture.

Deeter v Smith, 102 Wn.2d 376, 721 P.2d 519 (1986).

RCW 69.50.505 provides that personal property may be seized under legal process, and may also be seized without process if the officer is legally on the premises and has probable cause to believe that the property has been, or is intended to be used in connection with criminal activity,

Neither of those provisions apply here, where the property was seized under authority of an invalid warrant, and RCW 69.50.505 makes no provision for forfeiture of unlawfully seized personal property.

It should follow then, that, where the power to Order Forfeiture of property associated with controlled substance violations is purely statutory and will be denied absent [strict] compliance with proper forfeiture procedure, City of Walla Walla v #401,335.44, 164 Wn.App. 238, 262 P.3d 1239 (Div.II 2011); State v Alway, 64 Wn.App. 796, 828 P.2d 591, Espinoza v City of Everett, 87 Wn.App. 857, 943 P.2d 387 (1997). the forfeiture statute can not be held to apply to the property unlawfully seized at 2839 Louisian Street and 1275 Alabama Street.

And further, the Supreme Courts holds, " No Forfeiture is involved when a court returns property to a person from whom it was unlawfully taken by a government agent." State v One 1972 Mercury Capri, 85 Wn.2d 620, 527 P.2d 763 (1975);

Everett v Slade, 83 Wn.2d 80, 515 P.2d 1295 (1973).

This Court should find that Division II's Ruling applies retroactively to this case, vacate the now void Order of Forfeiture where it applies to property unlawfully seized at 2839 Louisiana Street and 1275 Alabama Street, and Order Return of ~~unlawfully seized property to its lawful owners.~~

IV. Whether, Superior Court Erred in Dismissal of Potts Appeal for an alleged non-compliance with RCW 34.05.546.

Assignment of error.

(6). Potts complied with the requirement of RCW 34.05.546.

RCW 34.05.542 holds the only jurisdictional requirement for filing a Notice of Appeal. This Court has already ruled that Potts was in full compliance with that statute.

Potts Notice of Appeal with the Administrative Order attached should have satisfied the requirement of RCW 34.05.546. It notified the City of Potts intent to appeal all rulings contained therein; (1) The attached Order contained the name and mailing address of the petitioner RCW 34.05.546(1); (2) Potts had no Attorney, RCW 34.05.546(2); (3) The name and address of respondent was contained in the Notice of Appeal hand delivered to respondent, (See Certificate of Service, CP 290-305)) RCW 34.05.546(3); (4) Attached to the Notice of Appeal was a copy of the Agency Order, RCW 34.05.546(4); (5) All parties to the proceeding were named at pg.2 of the

attached Agency Order, RCW 34.05.546(5); Facts to demonstrate that Potts is entitled to judicial review are contained in the Notice of Appeal and the Agency Order attached, RCW 34.05.546(6); Potts reasons for believing relief should be granted are evident in his appeal of all findings of fact and conclusions in attached Agency Order, RCW 34.05.546(7); (8) Once again, Potts requested relief from every fact and conclusion contained in the Agency Order attached. RCW 34.05.546(8).

Potts humbly requests this court to rule as the Supreme Court did. "Petitioner attached and incorporated administrative decision in his petition, and the Order identified all parties to the proceeding and reason for granting the petition." Skagit Surveyors and Engineers v Friends of Skagit County, 135 Wn.2d 542, 958 P.2d 96 (1998). Find that Potts was in compliance with RCW 34.05.546, reverse Superior Courts Dismissal of the Appeal , and remand to Superior Court for a full and fair hearing on the merit of the issues raised.

Assignment of Error.

(7) Appellants Judicial Notice of Fact remedied any alleged non-compliance with RCW 34.05.546.

The City has waived any right to object to Amendment of the Notice of Appeal, and Potts would have informed Superior Court of this fact if he would have been allowed to participate in the Proceedings.

Even though Potts felt that he had complied with the

statute by attaching and incorporating a copy of the Agency Order to the Notice of Appeal, he filed on July 10, 2014 an additional Judicial Notice of Fact to cure any perceived defect in the Notice of Appeal, (CP 316-322). Notice of Amendment was given in the first sentence of the document.

" Comes now Appellant with facts and authorities for this courts review." The Judicial Notice was entered into the Record and served on the City that same day. If the City had objections to Potts amending his Notice of Appeal, it had to present those objections at that time. The City did not object and Superior Court did not reject the amendment for failure to request permission to amend. As such, pursuant to Civil Rule 15, notice received into the record, [without objection], has the effect of amending the pleadings to conform to the evidence. Amende v Pierce County, 70 Wn.2d 391, 423 P.2d 634.

Potts argued this issue at pgs. 17-18 of the Opening Brief, and the City does not contest Potts position. This Court should find that the matter has been conceded, reverse Superior Courts Dismissal of the Appeal, and Remand to Superior Court.

Designation of Error.

- (8) The Supplemental Notice of Appeal was properly filed and satisfied all requirements of RCW 34.05.546.

Potts was entitled , pursuant to Civil Rule 15 to serve a supplemental petition within 30 days of this Courts Remand Order. Fanning v Guardian Life Insurance Company of America, 59 Wn.2d 101, 366 P.2d 207 (1961).

This issue was briefed at pgs 18-19 of the Opening Brief, and the City has failed to contest Potts allegations. This Court should consider the issue conceded, and find that Potts was in full compliance with RCW 34.05.546, Vacate Superior Courts Order of Dismissal, and Remand to Superior Court for a full and fair hearing on the merit of the issues raised.

Assignment of error.

- (9) Dismissal was not the proper remedy for an alleged violation of RCW 34.05.546.

Superior Court was acting in its Appellate Capacity, and should have considered RAP 5.3(f) before dismissing the appeal, "if the petition was insufficiently specific, proper course for the trial court was to order up the record, and permit employees to amend their petition." Leonard v Civil Service Commission, 25 Wn.App. 699, 611 P.2d 1290 (1980).

This Court should find that Dismissal is not the proper remedy for an alleged failure to comply with RCW 34.05.546, Reverse the Order of Dismissal, and Remand to Superior Court with instructions to determine the issues raised on their merit.

In Conclusion, Appellant asks this Court to find;

- (1) Superior Court abused its discretion and violated Potts right to Due Process in Issue I, Reverse and Remand.
- (2) Under Issue II, Potts asks this Court to find that,

the Order of Administrative Order of Forfeiture is Void where it pertains to Potts Family Motors Property, Vacate the Void Order, and Order the Return of Property to Potts Family Motors Incorporated.

(3). Under Issue III, Potts asks this Court to find that, Division II's Ruling in the Criminal Case renders the Order of Forfeiture Void in relation to property unlawfully seized at 2839 Louisiana Street and 1275 Alabama Street, vacate the void order, and order return of property to its owners.

(4) Under Issue IV, Potts asks this Court to find that, Superior Court erred in dismissing the appeal for an alleged violation of RCW 34.05.546, remand the case to Superior Court with instruction to determine the issues raised on their merit.

DATED THIS 13th DAY OF June 2017
SIGNED *Sidney A. Potts* pro se
SIDNEY A. POTTS pro se

FILED
COURT OF APPEALS
DIVISION II CERTIFICATE OF SERVICE

2017 JUN 16 AM 10:00

On this date a true and correct copy of Appellants Reply
STATE OF WASHINGTON
Brief was placed in the United States Mail, addressed to;

BY _____

DEPUTY
Clerk of the Court
Division II, Court of Appeals
950 Broadway, Suite 300
Tacoma, Washington
98402

Mr. John Kessler III
910 Lakeridge Way S.W.
Olympia, Washington
98502

and as such, pursuant to both State and Federal Mail Box
rule, the filing is timely.

DATED THIS 13th DAY OF June 2017

Signed Sidney A. Potts
SIDNEY A. POTTS

Exhibit "A"

FILED
SUPERIOR COURT

2012 SEP 18 P 1:09

COWLITZ COUNTY
BEVERLY R. LITTLE, CLERK

BY 

SUPERIOR COURT OF WASHINGTON FOR COWLITZ COUNTY

STATE OF WASHINGTON,

Plaintiff(s),

v

SIDNEY POTTS,

Defendant(s).

NO. 12-1-00876-8

MOTION FOR SUPPRESSION
OF EVIDENCE AND FOR
RETURN OF PROPERTY

Defendant by and through his attorney, James K. Morgan, hereby moves the court for an order suppressing any and all evidence seized by the police in this matter and for return of that property, on the basis that the property was seized in violation of the Fourth Amendment to the United States Constitution and Article One, Section Seven of the Washington State Constitution. This motion is based on CRr3.6, CRr 2.3(e), and the memorandum of authorities submitted in support hereto.

Dated this 17th day of September, 2012.

Respectfully Submitted,


JAMES K. MORGAN, WSB # 9127
Attorney for Defendant

EXHIBIT

Unofficial Copy 

James K. Morgan
ATTORNEY AT LAW
1555 THIRD AVE. SUITE A
LONGVIEW, WA 98632
(360) 425-3091
FAX (360) 414-0950

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Exhibit "B"

FILED
SUPERIOR COURT
MAY 31 2017
COWLITZ COUNTY
STACI MYKLEBUST

SUPERIOR COURT OF WASHINGTON FOR COWLITZ COUNTY

STATE OF WASHINGTON,

Plaintiff,

v.

SIDNEY A. POTTS,

Defendant.

No. 12-1-00876-8

ORDER DENYING MOTION FOR
RECONSIDERATION

THIS MATTER having come before the Court upon Defendant's Motion to Reconsider the Court's oral ruling on January 19, 2017, the Court having reviewed Defendant's Motion, and the record and files herein, does hereby deny Defendant's Motion for Reconsideration. The issue turns on the fact of parallel civil and criminal proceedings. Although the Court of Appeals ruled that the searches were not authorized under criminal law and any property seized must be returned to Mr. Potts, the Court of Appeals was not presented with nor did it consider nor make a ruling on full evidence from the parallel civil forfeiture proceeding, which forfeited the subject property. As a result, the Court is persuaded that the Court's prior order is warranted and proper. Defendant's Motion to Reconsider is hereby denied.

DATED this 31st day of May, 2017.


JUDGE

EXHIBIT

1 Exhibit "C"

FILED
SUPERIOR COURT

2012 SEP 19 P 3:16

COWLITZ COUNTY
BEVERLY R. LITTLE, CLERK

BY [Signature]

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9 SUPERIOR COURT OF WASHINGTON FOR COWLITZ COUNTY

10 STATE OF WASHINGTON,)

11 Plaintiff(s),)

NO. 12-1-00876-8

ORDER STAYING
FORFEITURE PROCEEDINGS

12)
13 v)

14 SIDNEY POTTS,)

15 Defendant(s).)

16 This matter having on regularly before the court upon the filing of the
17 defendant's motion for suppression of evidence, and the State having requested
18 a hearing date of October 11, 2012, to accommodate the State's schedule, and
19 the defendant having brought to the court's attention that the State is in the
20 process of attempting forfeiture of a great deal of property seized from the
21 defendant, and the outcome of the hearing on defendant's suppression motion
22 being potentially dispositive as to whether any such forfeiture proceedings can go
23 forward, and the court being fully advised of the premises, now therefore,

24 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that any such
25 forfeiture proceedings being conducted by the Longview Police Department
26 pertaining to any and all property of the defendant seized by the police on or
27 about August 10, 2012, and/or pursuant to any search warrants issued out of this

28 EXHIBIT "C"
(20)

James K. Morgan
ATTORNEY AT LAW
1555 THIRD AVE. SUITE A
LONGVIEW, WA 98632
(360) 425-3091
FAX (360) 414-0950

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1 court, are hereby stayed pending resolution of the hearing on the defendant's
2 motion for suppression of evidence filed herein on September 28, 2012.

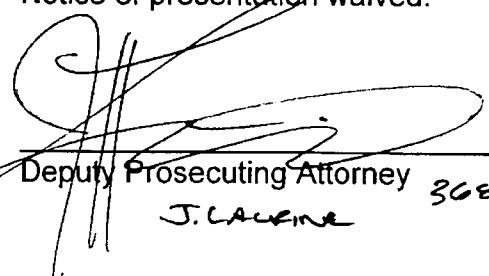
3 DONE IN OPEN COURT THIS 19 day of September, 2012.

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5
6 
7 JUDGE STEVEN WARNING

8
9 Presented by:

10 
11 JAMES K. MORGAN, WSB # 9127
Attorney for Defendant

12 Copy received, contents approved,
13 Notice of presentation waived:

14 
15
16 Deputy Prosecuting Attorney 36271
J. LAWRENCE